

Whiteheads' Success in Court of Appeal

In a recent Court of Appeal case, Whiteheads successfully represented Places for People Homes in a challenge based on arrears and bankruptcy.

The case (Sharples v Places for People Homes Ltd) was joined with another case (Godfrey v A2 Dominion Homes Ltd) with similar but not identical facts and focused on the question whether a landlord can take proceedings for possession based on a rent arrears ground where there is:

- An Order for Bankruptcy
- A Debt Relief Order (DRO)

Overview

In brief, where a debtor is made the subject of a Bankruptcy Order, a creditor is unable to take action to pursue a debt due (including rent arrears). The debt is recorded in the bankruptcy order and the creditor essentially 'sits in line' with other creditors to receive any money which is available. Once the bankruptcy is discharged, however, (usually after one year) the debtor has no further liability for the debt.

A Debt Relief Order is a less formal and less expensive way for a debtor to obtain protection than bankruptcy and is limited to total debt under £15,000 where the debtor has less than £300 in assets and less than £50 surplus income per month. If an Order is made, it prevents any creditors, including a landlord, from pursuing any action to recover the debt for a period of usually one year, after which the debt is written off and cannot be further pursued.

The question was whether in the case of a bankrupt tenant or one subject to a DRO, the landlord could issue proceedings for possession at all. This was because the tenant's lawyers asserted that the aim of proceedings was to

recover the debt and therefore try and avoid the provisions of the insolvency legislation.

We argued on behalf of Places for People, however, that an application for possession of a property was not in itself a remedy for recovering debt but was rather proceedings to recover full possession of the property itself. The ultimate objective of the repossession being that the landlord could re-let the property and receive rent payment for its usage.

Having heard arguments and submissions for two days on the 17th and 18th May 2011, the Court issued its Judgment on the 15th July 2011.

The key points are:

- ❖ The issue of proceedings for possession on rent arrears grounds 8, 10 or 11 of the Housing Act 1988 is not prevented even though the arrears concerned are included within the bankruptcy order or are covered by the DRO.
- ❖ In the proceedings, the Court may make an absolute or suspended Order.
- ❖ The Court cannot order the tenant to pay any arrears included in the bankruptcy order or covered by the DRO.
- ❖ If a suspended order is made, it can be conditional on payment of future rent and the costs of the proceedings.

Conclusion

The fear was that if the case had gone against the landlord they would face a position of tenants being in occupation with no incentive to make payments as they would be “immune” from proceedings. This fear has now been removed.

What should landlords now do faced with a bankrupt tenant or one subject to a DRO? Some guidance may be found in a quotation from a case referred to in the Judgment which concerned forfeiture of a lease.

“The right of forfeiture does not remedy any preceding breach of covenant but merely prevents its recurrence and affords relief to the landlord from being saddled with a defaulting tenant”.

The fact that this passage was relied on in the cases which involve social housing assured tenants may give significant comfort to a landlord to issue proceedings regardless of the insolvency situation and ask for an Order to “guarantee” future payments or for alternatively to ask for an Absolute Order so that the defaulting tenant’s property is made available for someone else.

This is an important case that may affect many claims made by tenants in future so if you have any queries about the issues or are facing similar claims, please do not hesitate to get in touch.

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